

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE J	PAGE 1 OF 7 PAGES
2. AMENDMENT/MODIFICATION NO. 0004	3. EFFECTIVE DATE 07/25/02	4. REQUISITION/PURCHASE REQ. NO. W81G67-2120-7348	5. PROJECT NO. (If applicable)	
6. ISSUED BY CONTRACTING DIVISION USACE - ST PAUL 190 5TH STREET E ST PAUL MN 55101 - 1638	CODE DACW37	7. ADMINISTERED BY (If other than Item 6) See Item 6		

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)		(X)	9A. AMENDMENT OF SOLICITATION NO. DACW37-02-T-0020
			9B. DATED (SEE ITEM 11) 07/05/02
			10A. MODIFICATION OF CONTRACT/ORDER NO.
			10B. DATED (SEE ITEM 13)
CODE 02	FACILITY CODE		

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☒ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☒ is not extended.

Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing Items 8 and 15, and returning 1 copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. Accounting and Appropriation Data (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

(X)	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc). SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
	D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor ☐ is not, ☐ is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

See page 2 herein

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA BY _____	16C. DATE SIGNED
(Signature of person authorized to sign)		(Signature of Contracting Officer)	

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

Note: For purposes of this effort, the terms “offer” and “bid” are interchangeable and equal to the meaning of the term “quote.” This amendment takes precedence over any conflicting requirement or information contained in other amendments or the scope of work.

I. The purpose of this amendment is to change the following items in the original combined synopsis/solicitation issued 5 July 2002:

- a.) Warranty is no longer a separate line item number. All warranty costs shall be included in the cost of the other line items. Sentence “(v)” of original combined synopsis/solicitation is changed **from** “This requirement consists of 3 line items (0001- Large Scale Portable Pumps, qty 2 Ea.), (0002 – Startup/Installation Services, qty 1 lot), (0003 – 1 Year Extended Warranty, qty 1 lot) **to** “This requirement consists of 2 line items (0001- Large Scale Portable Pumps, qty 2 Ea.) and (0002 – Startup/Installation Services, qty 1 lot).
- b.) Sentence “(vii)” is revised to read “Delivery and acceptance of deliverables will be FOB destination, Wahpeton, ND. Delivery of line item 0001, “Large Scale Portable Pumps,” shall occur no later than 75 days after award. Performance of line item 0002, “Startup/Installation Services,” shall commence no later than 15 days after line item 001, “Large Scale Portable Pumps,” is delivered and be completed within 5 working days.
- c.) Sentence “(ix)” is changed **from** “The provision at 52.212-2, Evaluation - Commercial Items, applies to this solicitation. The following factors are added to Paragraph (a) of FAR 52.212-2: (I. Technical Acceptability, II. Price). Technical acceptability is approximately equal to price. This acquisition will be conducted using the Test Program for Certain Commercial Items under FAR 13.5. Award will be made on the basis of price and other factors. Other factors include technical acceptability. In order to be considered technically acceptable, Each pumping unit at a minimum must meet or exceed the technical specifications outlined within the addendum I, Scope of Work. Additional guidance on price is provided under provision 52.212-1 section (g). Acceptability of the aforementioned items will be on a pass-fail basis. A competitive award will be made to the lowest priced technically acceptable offeror” **to** “The provision at 52.212-2, Evaluation - Commercial Items, applies to this solicitation. The following text is added to Paragraph (a) of FAR 52.212-2: (Low Price Technically Acceptable). This acquisition will be conducted using the Test Program for Certain Commercial Items under FAR 13.5. A competitive award will be made to the responsible firm with lowest priced technically acceptable quote. Each pumping unit at a minimum must meet or exceed the technical specifications outlined within the addendum I, Scope of Work, to be technically acceptable. Technical acceptability is on a pass-fail basis. Additional guidance on price is provided under provision 52.212-1 section (g).”

- d.) Paragraph "(0)", "warranty," of clause 52.212-4, "Contract Terms and Conditions – Commercial Items," referenced in sentence "(xi)" is deleted. The following clause is incorporated in place of paragraph "(0)" deleted above:

52.246-17 Warranty of Supplies of a Noncomplex Nature (May 2001) (Deviation)

(a) *Definitions.* As used in this clause--

"Acceptance" means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract. "Supplies" means the end items furnished by the Contractor and related services required under the contract. The word does not include "data."

(b) *Contractor's obligations.*

(1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for 36 months after acceptance of line item 0001, "Large Scale Portable Pumps":

- (i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this contract; and
- (ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(2) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in this contract and the Contractor's plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.

(c) *Remedies available to the Government.*

(1) The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within 30 days after the discovery of the defect.

(2) Within a reasonable time after the notice, the Contracting Officer may either --

- (i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (b)(1) of this clause; or

- (ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances.
- (3)
- (i) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty action shall be determined by the applicable sampling procedures in the contract. The Contracting Officer --
- (A) May, for sampling purposes, group any supplies delivered under this contract;
 - (B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;
 - (C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; provided, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and
 - (D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.
- (ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Contracting Officer may exercise one or more of the following options:
- (A) Require an equitable adjustment in the contract price for any group of supplies.
 - (B) Screen the supplies grouped for warranty action under this clause at the Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement.
 - (C) Require the Contractor to screen the supplies at locations designated by the Government within the continental United States and to correct or replace all nonconforming supplies.
 - (D) Return the supplies grouped for warranty action under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.
- (4)
- (i) The Contracting Officer may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies from another source and charge to the Contractor the cost occasioned to the Government thereby if the Contractor --
- (A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or
 - (B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(ii) Instead of correction or replacement by the Government, the Contracting Officer may require an equitable adjustment of the contract price. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. The Government is entitled to reimbursement from the Contractor, or from the proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(5) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(6) In addition to the warranty requirements above, the contractor shall provide the Government with any commercial warranties that would be given to its customers in normal commercial practice. The Contractor also shall pass through to the Government any warranties provided to it by any subcontractor or supplier under this contract and take such actions as are necessary to make those warranties enforceable by the Government.

(End of clause)

e.) The following clause is hereby incorporated into the combined synopsis/solicitation:

52.232-5002 CONTINUING CONTRACTS (ALTERNATE) (MAR 1995) — EFARS

(a) Funds are not available at the inception of this contract to cover the entire contract price. The sum of \$350,000.00 has been reserved for this contract and is available for payment to the contractor during the current fiscal year. It is expected that Congress will make appropriations for future fiscal years from which additional funds, together with funds provided by one or more non-federal project sponsors will be reserved for this contract. The liability of the United States for payments beyond the funds reserved for this contract is contingent on the reservation of additional funds.

(b) Failure to make payments in excess of the amount currently reserved, or that may be reserved from time to time, shall not be considered a breach of this contract, and shall not entitle the contractor to a price adjustment under the terms of this contract except as specifically provided in paragraphs (e) and (h) below.

(c) The Government may at any time reserve additional funds for payments under the contract if there are funds available for such purpose. The contracting officer will promptly notify the contractor of any additional funds reserved for the contract by issuing an administrative modification to the contract.

(d) If earnings will be such that funds reserved for the contract will be exhausted before the end of any fiscal year, the contractor shall give written notice to the contracting officer of the estimated date of exhaustion and the amount of additional funds which will be needed to meet

payments due or to become due under this contract during that fiscal year. This notice shall be given not less than 45 nor more than 60 days prior to the estimated date of exhaustion.

(e) No payments will be made after exhaustion of funds except to the extent that additional funds are reserved for the contract. If and when sufficient additional funds are reserved, the contractor shall be entitled to simple interest on any payment that the contracting officer determines was actually earned under the terms of this contract and would have been made except for exhaustion of funds. Interest shall be computed from the time such payment would otherwise have been made until actually or constructively made, and shall be at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, as in effect on the first day of the delay in such payment.

(f) Any suspension, delay, or interruption of work arising from exhaustion or anticipated exhaustion of funds shall not constitute a breach of this contract and shall not entitle the contractor to any price adjustment under a "Suspension of Work" or similar clause or in any other manner under this contract.

(g) An equitable adjustment in performance time shall be made for any increase in the time required for performance of any part of the work arising from exhaustion of funds or the reasonable anticipation of exhaustion of funds.

(h) If, upon the expiration of sixty (60) days after the beginning of the fiscal year following an exhaustion of funds, the Government has failed to reserve sufficient additional funds to cover payments otherwise due, the contractor, by written notice delivered to the contracting officer at any time before such additional funds are reserved, may elect to treat his right to proceed with the work as having been terminated. Such a termination shall be at no cost to the Government, except that, to the extent that additional funds to make payment therefore are allocated to this contract, it may be treated as a termination for the convenience of the Government.

(i) If at any time it becomes apparent that the funds reserved for any fiscal year are in excess of the funds required to meet all payments due or to become due the contractor because of work performed and to be performed under this contract during the fiscal year, the Government reserves the right, after notice to the contractor, to reduce said reservation by the amount of such excess.

(j) The term "Reservation" means monies that have been set aside and made available for payments under this contract.

(End of clause)

f.) The following phrase "accept other than the lowest offer" located in paragraph of 52.212-1 is deleted. The clause is referenced in sentence "(viii)" of the synopsis/solicitation.

II. This amendment also incorporates changes to addendum I, Scope of Work:

SPECS PART 2, Technical Scope of Work Section 15161, Paragraph 2.3.2 Pump: Add additional sentences to the end of the paragraph as follows: "Pump propeller size of 24 inch diameter shall be considered a nominal diameter. The propeller diameter can be slightly smaller (up to $\frac{3}{4}$ inch) to accommodate any necessary clearances in the pump bowl.

SPECS PART 2, Technical Scope of Work Section 15161, Paragraph 2.3.3 Hydraulic Motor: Add additional sentences to the end of the paragraph as follows: "Coating the hydraulic motor with mastic or other paint system will only be considered as an equal if the Contractor can provide documentation of long term reliability. This documentation shall be provided with the bid package."

SPECS PART 2, Technical Scope of Work Section 15161, Paragraph 2.3.6 Hydraulic Piping and Hose: Add additional sentences to the end of the paragraph as follows: "The Contractor can provide alternate systems for connection of the hydraulic hoses. Alternate systems shall allow quick connection and disconnect of hydraulic lines as the pump unit is lowered and raised. The Contractor shall provide documentation of the long term reliability of this type of system with the bid package including at least 10 current pump installations. The documentation shall address the leakage rate of the hydraulic fluid after long term use. The system shall be demonstrated and tested during the required factory test."

All other terms and conditions remain unchanged.